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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
YEMISI AKINYEMI,

PLAINTIFF,

-against-

Case No.
07 CV 4048

MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF
HOMELAND SECURITY,

DEFENDANTS.

-----X

DATE: October 4, 2007

TIME: 10:04 a.m.

EXAMINATION BEFORE TRIAL of the
Defendant, DEPARTMENT OF HOMELAND SECURITY,
by a Witness, SUSAN MITCHELL, taken by the
Plaintiff, pursuant to a Court Order, held
at the law offices of K.C. Okoli, Esq., 330
Seventh Avenue, 15th floor, New York, New
York 10001, before Lieng Boua, a Registered
Professional Reporter and Notary Public of
the State of New York.

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2 A P P E A R A N C E S:

3

4 LAW OFFICES OF K.C. OKOLI, ESQ.
Attorney for the Plaintiff
5 330 Seventh Avenue, 15th Floor
New York, New York 10001

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7

U.S. DEPARTMENT OF HOMELAND SECURITY
8 One Penn Plaza 11th Floor
New York, New York 10019
9 BY: KIMBERLY MORGAN, ESQ.

10

11 U.S. DEPARTMENT OF JUSTICE
U.S. ATTORNEY'S OFFICE
12 SOUTHERN DISTRICT OF NEW YORK
86 Chambers Street
13 New York, New York 10007
BY: JOHN D. CLOPPER, ESQ.

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2 S U S A N M I T C H E L L, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. OKOLI:

8 Q. Please state your name for the
9 record.

10 A. Susan Mitchell.

11 Q. What is your business address?

12 A. One Penn Plaza, Suite 11-0, New
13 York, New York 10119.

14 Q. Good morning, Ms. Mitchell. As
15 you know, we met before. My name is K.C.
16 Okoli, and I represent Ms. Akinyemi in this
17 lawsuit. I am going to be asking you a couple
18 of questions.

19 If at any time you don't hear a
20 question or you do not understand, please let
21 me know. If you wish to take a break for any
22 reason during the course of the deposition,
23 you are entitled to do so.

24 Who is your current employer?

25 A. The Department of Homeland

1 MITCHELL

2 Security, U.S. Customs and Border Protection.

3 Q. Since when did you become employed
4 by your present employer?

5 A. The Department of Homeland
6 Security was created on March 1st, 2003. That
7 is when I became an employee of Customs and
8 Border Protection.

9 Q. Did you work for a predecessor
10 organization before that?

11 A. (No response.)

12 Q. Did you work for a predecessor
13 organization before that?

14 A. Yes, I did. I worked for the
15 United States Customs Service.

16 Q. So in total, how many years have
17 you worked for United States Customs and then
18 Customs and Border Protection?

19 A. From February 1978.

20 Q. Okay. What is your current job
21 title?

22 A. I am the director of field
23 operations for the New York office of Customs
24 and Border Protection.

25 Q. Since when did you become the

1 MITCHELL

2 director of field operations?

3 A. In July of 2002 under the U.S.
4 Customs Service, I became the director of
5 field operations and that carried over into
6 the Customs and Border Protection.

7 Q. And for the record, what is your
8 race?

9 A. I am white.

10 Q. And what is your national origin?

11 A. I am Irish American.

12 Q. What is your highest level of
13 education?

14 A. I have a BA from St. Francis
15 College.

16 Q. Where is St. Francis College
17 located?

18 A. In Brooklyn.

19 Q. When did you own that BA degree?

20 A. In 1978.

21 Q. And what was the major?

22 A. Economics.

23 Q. Do you know a Sharmila Haq, H-a-q?

24 A. I do know that name.

25 Q. Could you tell us briefly how you

1 MITCHELL

2 came to know that name?

3 A. In the course of this complaint,
4 her name was raised as an employee who had
5 been treated differently.

6 Q. When you say she is an employee,
7 she is an employee of Customs and Border
8 Protection?

9 A. Correct.

10 Q. Is she still working for Customs
11 and Border Protection?

12 A. Yes, she is.

13 Q. What is her current title?

14 A. She is a Customs and Border
15 Protection officer, CBPO.

16 Q. Do you know when she became
17 employed by the Customs and Border Protection?

18 A. I don't know that date.

19 Q. Do you know what year?

20 A. No, I don't.

21 Q. Do you know whether she passed a
22 probationary period before she became
23 permanent?

24 A. Yes, she did.

25 Q. As you sit here, do you know how

1 MITCHELL

2 many years or what length of probationary
3 period she served?

4 A. I don't know the term of her
5 probationary appointment.

6 Q. When the name came up in
7 connection with the present lawsuit, what, if
8 anything, did you do?

9 MR. OKOLI: Strike that.

10 Q. When you say her name came up,
11 what was it? What connection did her name
12 come up?

13 A. I was advised by the EEO manager
14 that your client had, in her complaint to the
15 EEO manager, had raised her name as an
16 employee who had been treated differently.

17 Q. Would you be able to determine
18 more specifically in what way my client
19 alleged she was treated differently?

20 A. Based on a conversation with
21 Mr. Angevine, there was a claim that she had
22 been involved in some misconduct during her
23 probationary period.

24 Q. And did you learn what misconduct
25 it was that she was involved in?

1 MITCHELL

2 A. Yes, I did.

3 Q. What was it that you learned?

4 A. What I had learned was that
5 several months earlier while she was still in
6 her probation, there was an incident with her
7 weapon.

8 Q. And what did you --

9 MR. CLOPPER: Mr. Okoli, if I may
10 for a second, I just want to point out
11 that we will designate portions of the
12 transcript that are confidential under
13 the confidentiality order once the
14 transcript has been generated; but just
15 for the record now, we will deem this
16 entire line of questioning about Sharmila
17 Haq to be confidential under the
18 confidentiality order.

19 MR. OKOLI: But my time to make an
20 application will not come up until you
21 make a formal designation because I
22 can't -- I mean, we don't have the
23 transcript. I can't approach the judge
24 to determine confidentiality when I don't
25 have anything before me.

1 MITCHELL

2 MR. CLOPPER: Sure, yes.

3 MR. OKOLI: I just wanted to be
4 clear on that. I understand what your
5 objection is but the point I am making is
6 that my 14 days does not start running
7 until you give me the transcript in which
8 it's designated to be confidential.

9 From that point, that is when I
10 can confirm the confidentiality. Fair
11 enough?

12 MR. CLOPPER: Yes, I think that is
13 fair enough.

14 Q. So what was it that you learned
15 concerning Ms. Haq's weapon?

16 A. That, again, several months
17 earlier from the time when I found out, she
18 had left her weapon in a restroom.

19 Q. And did you know where the
20 restroom was?

21 A. At one of the terminals at Newark
22 Airport.

23 Q. Was this her service revolver?

24 A. Yes, it was.

25 Q. Was this restroom a public

1 MITCHELL

2 restroom?

3 A. It was.

4 Q. Let me put it this way. Was it a
5 private restroom?

6 A. It was for the use of airport
7 employees, CBP, and other airplane employees.

8 MR. CLOPPER: I object to this
9 line of questioning on lack of personal
10 knowledge.

11 MR. OKOLI: I am trying to find
12 out what she found.

13 Q. Who was it that you spoke with
14 that gave you this information?

15 A. It was part of a report of
16 investigation.

17 Q. When you say "part of a report of
18 investigation," what report?

19 A. After the allegations were made, I
20 asked for someone to look into these
21 allegations; and based on that, there was a
22 report that was prepared as part of a
23 disciplinary process.

24 Q. Was this report an original
25 report?

1 MITCHELL

2 A. I --

3 Q. I mean, the report you said that
4 was prepared, was it a verbal report or
5 something in writing?

6 A. It was part of the discipline
7 package. I believe it was a written report.

8 Q. Who was it that you asked to
9 investigate the allegation?

10 A. The area director.

11 Q. Who was the area director that you
12 asked to do this?

13 A. Kathleen Haage.

14 Q. How soon after you learned of this
15 allegation did you ask Ms. Haage to
16 investigate the allegation?

17 A. Either the same day or the
18 following day, within 24 hours of the
19 allegation coming to my attention.

20 Q. And how long did it take for
21 Ms. Haage to present you with a report, with
22 her report?

23 A. I don't recall specifically.

24 Q. Can you give us an estimation of
25 time? Less than one month, more than one

1 MITCHELL

2 month?

3 A. I really did not specifically look
4 this case up, so I don't know.

5 Q. Let me ask you this. When did you
6 learn that you would be questioned at this
7 deposition?

8 A. I don't know. Um, probably two
9 weeks ago.

10 Q. At the time, you knew that the
11 questioning would relate to Ms. Akinyemi in
12 this case, this particular case? You knew
13 that; correct?

14 A. Correct.

15 Q. From then to now, did you review
16 any documents in connection with this case?

17 A. Yes. I reviewed Ms. Akinyemi's
18 case file.

19 Q. What documents do you recall
20 reviewing?

21 A. I recall reviewing the removal
22 letter and the statements that supported the
23 removal letter.

24 Q. When you say "removal letter,"
25 what does that mean?

1 MITCHELL

2 A. The letter that I signed to
3 terminate Ms. Akinyemi to remove her from
4 service.

5 Q. Was that the only thing that you
6 reviewed? Did you review her letter and
7 the -- what else did you say you reviewed?

8 A. The supporting documentation for
9 that -- the statements that were prepared as
10 supporting documentation for that removal
11 action.

12 Q. When you say "statements that were
13 prepared," can you be more explicit about the
14 statements that you are talking about to the
15 extent that you can recall them?

16 A. Yes. I reviewed the statements
17 made by the officers the night of the
18 incident, of the supervisor the night of the
19 incident, of Ms. Akinyemi, two of her
20 statements or her two statements, excuse me,
21 and of another supervisor who had been her
22 supervisor that day of the incident.

23 Q. Okay.

24 A. Those are the statements that I
25 reviewed.

1 MITCHELL

2 Q. Do you recall the names of the
3 supervisors?

4 A. I read the statements by Mitch
5 Landau and statements by -- one that was
6 Ms. Akinyemi's statement that was signed by
7 Ms. Akinyemi and Supervisor Calise and I read
8 a statement by Supervisor Herb Herter.

9 Q. As you sit here today, do you know
10 whether an investigative file was created in
11 connection with this case?

12 A. As far as I know, that is the
13 entire file.

14 Q. Did you review the investigative
15 file?

16 MR. CLOPPER: I will object on
17 vague and ambiguous grounds. Which
18 investigative file do you mean? You mean
19 the EEOC investigative file or the file
20 that she reviewed as part of the decision
21 to terminate Ms. Akinyemi?

22 Q. You said you spoke with
23 Mr. Angevine; correct?

24 A. I did speak with Mr. Angevine.

25 Q. Who is Mr. Angevine?

1 MITCHELL

2 A. The EEO program manager.

3 Q. Are you aware that Ms. Akinyemi
4 filed a formal charge with the EEOC?

5 A. Yes, I am.

6 Q. Do you know that an investigative
7 file was generated as a result of that charge?

8 A. I don't know. I've never seen
9 one, but.

10 Q. As you sit here, you've never seen
11 one?

12 A. An investigative file for EEOC,
13 no, I never saw an investigative file.

14 Q. Did you see an investigative file
15 generated by the U.S. Customs and Border
16 Protection?

17 MR. CLOPPER: Objection,
18 ambiguous. Are we speaking of
19 Ms. Akinyemi or Ms. Haq?

20 MR. OKOLI: Ms. Akinyemi.

21 A. Again, I guess -- can I ask a
22 clarifying question? Are we talking about the
23 discipline file or the EEOC file?

24 Q. I'm talking, are you aware of any
25 investigation that was conducted by the

1 MITCHELL

2 Customs and Border Protection after
3 Ms. Akinyemi had filed a charge of
4 discrimination?

5 A. I have seen no investigative file
6 relative to the charge of discrimination.

7 Q. Did you provide an unsworn
8 statement as part of the investigation of
9 Ms. Akinyemi's claim of discrimination?

10 A. Yes, I did.

11 Q. Who did you provide that unsworn
12 statement to?

13 A. I believe the investigator was
14 Janice Campbell.

15 Q. Now, the question is, between the
16 time you provided that unsworn statement and
17 today, have you ever seen an investigative
18 file that was generated by Ms. Campbell?

19 A. No.

20 Q. Back to Ms. Haq, what did you
21 learn in connection with Ms. Haq's weapon
22 being left at the bathroom or in a bathroom?

23 A. Was your first word "when" or
24 "what"?

25 Q. What.

1 MITCHELL

2 A. Okay. I learned that she did
3 indeed leave her weapon in the restroom.

4 Q. Did you find out who it was that
5 was supervising her at the time?

6 A. Yes, I did.

7 Q. Did you speak with whoever was her
8 supervisor at the time?

9 A. I did.

10 Q. And who was that supervisor at the
11 time?

12 A. Her supervisor? I have to correct
13 myself. I don't know -- I did not speak to
14 her supervisor.

15 Q. Did you ask why the information
16 was not brought to your attention?

17 A. Yes.

18 Q. What did you learn was the reason
19 that the information was not brought to your
20 attention?

21 A. I learned that there were two
22 officers involved in finding the weapon. I
23 learned that a supervisor was involved in that
24 and that -- that is what I learned.

25 Q. Did you learn whether the officers

1 MITCHELL

2 that found the weapon made a report of it to
3 their supervisor?

4 A. I did find out about that.

5 Q. What did you find out is what I am
6 asking? Did you then find out that the person
7 who found the weapon actually reported it?

8 A. I found that they did not, for
9 several months, report it.

10 Q. The people who found it did not
11 report it for several months?

12 A. Correct.

13 Q. Did you learn when they then
14 reported it?

15 A. Several months later.

16 Q. But how many months before
17 Ms. Akinyemi's issue came up?

18 A. I don't know the exact time line
19 but it was before Ms. Akinyemi's issue came up
20 that they reported it to a supervisor.

21 Q. Did you find out from them why it
22 took several months for them to report it at
23 the time that they did?

24 A. I did find out.

25 Q. What did you find out?

1 MITCHELL

2 A. They decided to take care of it
3 themselves.

4 Q. What are the names of these people
5 who decided to take care of it themselves?

6 A. CBPO Wescott.

7 Q. Wescott, can you spell that?

8 A. W-e-s-c-o-t-t.

9 Q. Okay.

10 A. And there's another individual
11 whose name is escaping me right now.

12 Q. Is that individual's name a
13 female?

14 A. Male.

15 _____

16 Q. We will leave a space in the
17 transcript so you can provide the name of that
18 person.

19 MR. CLOPPER: She is answering
20 that she does not know, but we will
21 respond to it in an appropriate discovery
22 request for that information.

23 MR. OKOLI: She said the name is
24 escaping her.

25 Can you read back the answer?

1 MITCHELL

2 That is what she said. The name
3 is escaping her, so we are leaving a
4 space for her to check the name and put
5 it in the transcript.

6 MR. CLOPPER: No. She stated she
7 does not remember the name. That is her
8 answer. We will respond to an
9 appropriate discovery request.

10 MR. OKOLI: She does not remember
11 the name. We will still leave a space.
12 I will not get into an argument with you
13 on this. The record will say what it
14 says.

15 What I heard her say is, the name
16 escapes her at the moment. We are
17 leaving a space if it occurs to her or
18 she has a document that she can look at
19 and fill in.

20 Q. Do you have a document where this
21 person's name would appear?

22 A. Yes. There is a file that would
23 have that person's name.

24 Q. So I ask you to make a search of
25 that file, and then we will leave a space in

1 MITCHELL

2 the transcript so that you can put in the name
3 of this person.

4 Mr. Wescott -- it is Mr. Wescott;
5 right?

6 A. Yes, it is.

7 Q. What is Mr. Wescott's race?

8 A. He is white.

9 Q. The other person that you talked
10 about that you said is a female, what is her
11 race?

12 MR. CLOPPER: Objection. I think
13 she said it was a male.

14 MR. OKOLI: I am sorry.

15 Q. The male who had decided to take
16 care of this situation was Mr. Wescott. What
17 is his race?

18 A. White.

19 Q. By the way, what is Ms. Haq's
20 race?

21 A. Black.

22 Q. When you say "black," black as in
23 African-American?

24 A. Yes, yes.

25 Q. Did you actually see Ms. Haq?

1 MITCHELL

2 Have you ever seen Ms. Haq?

3 A. Yes, I have.

4 Q. Did you ask Ms. Haq her race?

5 A. No, I did not.

6 Q. Would you know whether Ms. Haq is,
7 in fact, of Asian origin?

8 A. Asian?

9 Q. Asian, A-s-i-a-n.

10 A. I don't know what her -- if she is
11 Asian.

12 Q. Could you describe Ms. Haq for us,
13 please, her physical features?

14 A. She is about my height, which I
15 guess is about five-five, heavy-set, not as
16 heavy-set as I, and black.

17 Q. Approximately how much weight
18 would you say? What would you say she
19 weighed?

20 MR. CLOPPER: Objection.

21 MR. OKOLI: Objection doesn't mean
22 she cannot answer the question. Place
23 your objection unless you are instructing
24 the witness not to answer.

25 Are you instructing the witness

1 MITCHELL

2 not to answer?

3 MR. CLOPPER: She can answer, I
4 mean.

5 MR. OKOLI: Then that is okay.

6 Q. Go ahead and answer.

7 A. I have no idea what her weight is.

8 Q. Do you know the color of her eyes?
9 You have seen her; right?

10 A. We met. I did have a meeting with
11 her.

12 Q. Okay. Color eyes?

13 A. I don't know.

14 Q. Hair, what kind of hair?

15 A. She was in uniform so her hair was
16 put up. I don't know.

17 Q. Skin color?

18 A. Again, black.

19 Q. As you sit here today, do you know
20 whether Ms. Haq was born in Nigeria?

21 A. I do not know where Ms. Haq was
22 born.

23 Q. And you didn't ask her?

24 A. No. I would not.

25 Q. What was the purpose of your

1 MITCHELL

2 meeting with Ms. Haq?

3 A. It was part of a discipline
4 process.

5 Q. When you say "part of a discipline
6 process," specifically what was it that you
7 met her for?

8 A. It was during her oral apply to
9 her proposed disciplinary action.

10 Q. Did you invite her to come and
11 make an oral reply?

12 A. It is part of our process.

13 Q. I am not asking what the process
14 is. I am asking you. Did you invite her to
15 come and make an oral reply?

16 A. No, I did not personally invite
17 her to come and make an oral reply.

18 Q. Did you ask someone on your behalf
19 to invite her so you could meet with her to
20 make an oral reply?

21 A. I did not ask anyone to invite her
22 for an oral reply.

23 Q. How did she know to come and make
24 an oral reply before you?

25 A. Because part of our procedure

1 MITCHELL

2 during the discipline process, in her proposal
3 letter, she is advised of her ability to make
4 an oral reply.

5 Q. And did she then communicate to
6 you that she wanted to make an oral reply?

7 A. No. They go through labor and
8 employee relations.

9 Q. Now, in making this oral reply,
10 was it just to you or to a panel of which you
11 were a member?

12 A. It was just to me.

13 Q. So how did you learn that she was
14 going to appear before you to make an oral
15 reply or she just walked into your office?

16 A. As it tells her in her letter, she
17 contacts labor and employee relations and that
18 office contacts my assistant and they set up
19 an appointment.

20 Q. So your office was contacted to
21 set up an appointment for her to come and meet
22 with you?

23 A. Correct.

24 Q. Did you ask her any questions when
25 she came to meet with you?

1 MITCHELL

2 A. I don't have the transcript in
3 front of me.

4 Q. When you say "transcript," was the
5 transcript of the interview between you and
6 her created?

7 A. Correct. For all oral replies, we
8 have a transcript created.

9 Q. When you say "a transcript," is
10 this tape-recorded or is it taken
11 stenographically, this way?

12 A. A stenographer, a court reporter
13 is there with the employee, their
14 representative.

15 Q. Did she come with anyone else?

16 A. Yes, her union representative.

17 Q. Do you recall which union
18 representative she came with?

19 A. Larry Tancredi.

20 Q. And how long did her oral reply
21 take?

22 A. I don't recall exactly.

23 Q. Less than an hour?

24 A. We don't have a time limit. I
25 don't know how long it took.

1 MITCHELL

2 Q. Where did this take place?

3 A. Her oral reply was in a conference
4 room at One Penn Plaza.

5 Q. And other than you, the
6 stenographer, Mr. Tancredi and Ms. Haq, was
7 anyone else in the conference room with you?

8 A. Yes. Labor and employee relations
9 was either there in person or by telephone.
10 In this case, I believe it was by phone. By
11 the way, her name was not Haq at the time.

12 Q. I'm sorry?

13 A. She had changed her name by that
14 time.

15 Q. What is the present name?

16 A. Z-a-m-a-n.

17 Q. Z-a-m-a-n?

18 A. Yes, correct, Zaman.

19 Q. At the time of her probation, she
20 was Haq?

21 A. Correct.

22 Q. As you sit here today, do you know
23 if Zaman is her married name or just a name
24 she just changed to?

25 A. That is her married name.

1 MITCHELL

2 MR. OKOLI: By the way, we will
3 ask for a transcript of Ms. Haq's oral
4 reply.

5 MR. CLOPPER: Sure. As we've done
6 in the deposition of your client, I ask
7 that all these requests be placed in
8 writing.

9 Q. Do you recall whether it was a
10 question-and-answer session or you just let
11 her talk?

12 A. The oral reply is set up where the
13 employee and their representative just talk.

14 Q. As you sit here today, do you
15 recall some of the things she talked about?

16 A. Yes, I recall some of the things
17 she talked about.

18 Q. What do you recall?

19 A. I recall that, when she was
20 notified that her weapon was found, she
21 immediately asked if she should call the
22 police or a supervisor.

23 Q. And then who did she ask that
24 question?

25 A. That was asked of the officer

1 MITCHELL

2 whose name I -- I am sorry. I can't remember
3 that officer's name as I sit here today.

4 Q. That is the officer who found the
5 weapon?

6 A. Correct.

7 Q. And what did she say she was told
8 when she asked the question whether she should
9 call a supervisor or call a police?

10 A. She was told by this officer that
11 he would handle it the following day and that
12 she should continue on her way home and he
13 would handle it the next day.

14 Q. Was she given back her weapon on
15 that day?

16 A. The next day.

17 Q. The next day. So another officer
18 kept her weapon overnight?

19 A. Correct. It was locked up.

20 Q. And that officer whose name you
21 don't remember apparently did not take care of
22 it the next day?

23 A. (No response.)

24 Q. You said the officer said he would
25 take care of it?

1 MITCHELL

2 A. Correct.

3 Q. Apparently he did not? It wasn't
4 reported to anyone?

5 A. It was not reported, correct.

6 Q. And when it was reported, do you
7 know the name of the supervisor that it was
8 reported to?

9 A. Yes.

10 Q. What is the name of the
11 supervisor?

12 A. Carol Fowlkes, F-o-w-l-k-e-s.

13 Q. And what did you learn Carol
14 Fowlkes did when this was reported to her?

15 A. She counseled the two employees
16 who reported it to her and did nothing else at
17 that time.

18 Q. And the report that was made by
19 these employees, was it a verbal report or a
20 written report?

21 A. Verbal.

22 Q. The counseling that was done by
23 Fowlkes when it was reported to her, was it
24 memorialized?

25 A. Not at the time.

1 MITCHELL

2 Q. Was it subsequently memorialized?

3 A. Yes, it was.

4 Q. What time elapsed from the time it
5 was reported to her to the time it was
6 memorialized?

7 A. A long time, many months.

8 Q. When you say "many months," do you
9 know why -- did you find out from her why it
10 took many months for her to memorialize what
11 was reported to her months earlier?

12 A. She decided that, because time had
13 elapsed, that she just talked to the employees
14 and did nothing with it. When I asked that
15 this be investigated or looked into, the
16 allegations by your client, that's when she
17 memorialized it in her statements relative to
18 that review.

19 Q. Okay. Just to be clear, as you
20 sit here today, are you aware of any documents
21 that exist within Customs and Border
22 Protection memorializing this incident or
23 anything anybody did about this incident
24 before my client raised the issue?

25 A. I am not aware of any

1 MITCHELL

2 documentation prior to your client raising the
3 issue.

4 Q. Okay. What is Ms. Fowlkes' race?

5 A. Black.

6 Q. Do you know Ms. Fowlkes' national
7 origin?

8 A. No, I don't.

9 Q. Do you know whether she was born
10 in Nigeria?

11 A. I do not know where Ms. Fowlkes
12 was born.

13 Q. Subsequent to the oral response of
14 Ms. Haq, did you take any action?

15 A. Yes, I did.

16 Q. What action did you take?

17 A. She was suspended.

18 Q. For how long did you suspend her?

19 A. She was suspended for three days.

20 Q. Three days?

21 A. Correct.

22 Q. At which airport did she leave
23 this gun?

24 A. Newark Airport.

25 Q. And you said there are people

1 MITCHELL

2 other than customs personnel that could access
3 this airport bathroom; correct?

4 A. Correct.

5 Q. Could you give me an example of
6 some of the people who could access that
7 airport bathroom who are not CBP employees?

8 A. The airline representatives.

9 Q. And anyone who could go past
10 security?

11 A. Any employee. It was not in a
12 public area but it was in an area that airport
13 employees could if they had access to that
14 particular security area.

15 Q. When you say "an area," could you
16 be more specific about this area? Was it a
17 restricted area?

18 A. It was a federal inspection site.

19 Q. A federal inspection site?

20 A. Yes, restricted from the public.

21 Q. Did she explain what caused her to
22 leave the gun in that area?

23 A. When she went to the ladies' room,
24 she left it there. She took it off and left
25 it there.

1 MITCHELL

2 Q. This is a weapon that she is
3 supposed to be wearing on herself; correct?

4 A. Correct.

5 Q. Did she say where she went after
6 she left the ladies' room?

7 A. Immediately into her car and went
8 home. It was the end of her tour.

9 Q. So when was it that she had this
10 conversation with the officers who found the
11 gun?

12 A. The officer who found the gun
13 called her on her cell phone as she was
14 driving home.

15 Q. So even as she was driving home,
16 she was unaware she had left her gun?

17 A. Correct.

18 Q. Now, do you know who a Jolanta
19 Gluba is?

20 A. Yes, I do.

21 MR. CLOPPER: Mr. Okoli, we also
22 designate this, once we get the
23 transcript, confidential.

24 MR. OKOLI: It is a continuing
25 objection. You don't have to repeat it.

1 MITCHELL

2 When you get the transcript, designate
3 it. My time does not start running until
4 after I get the transcript.

5 MR. CLOPPER: Very well.

6 Q. Who is Jolanta Gluba?

7 A. A CBPO, Newark Airport. We will
8 leave it airport.

9 MR. CLOPPER: Of course, we also
10 have a standing objection to the
11 relevance of these.

12 MR. OKOLI: Okay.

13 Q. Just quickly, at the time of her
14 probation, was Officer Haq someone who was
15 within your area of authority?

16 A. During her probation period?

17 Q. Yes.

18 A. Yes.

19 Q. And what about Officer Gluba? Is
20 she somebody within your area of authority?

21 A. Yes.

22 Q. Do you know when she was employed
23 by Customs?

24 A. No.

25 MR. CLOPPER: I will just object;

1 MITCHELL

2 ambiguous. Are you asking about --

3 Q. Is she somebody employed within an
4 area covered by you as the director of field
5 operations for Newark Airport?

6 A. Yes. As the director of field
7 operations, I would be considered her
8 sixth-line supervisor.

9 Q. Thank you. The same question
10 applies to Jolanta Gluba. Is she somebody
11 within your --

12 A. Correct, sixth line.

13 Q. Very well. How did you learn
14 about Jolanta Gluba?

15 A. I don't recall.

16 Q. As you sit here today, do you know
17 whether my client made an allegation that
18 Ms. Gluba was treated differently from her?

19 A. I don't know if that was on the
20 list of names that Mr. Angevine gave me or
21 not.

22 Q. As you sit here today, what do you
23 recall of Ms. Gluba?

24 A. I know her name because she was
25 out for quite some time. She was in a car

1 MITCHELL

2 accident on government time, so I know her
3 name from that. That's my only personal
4 interaction with Ms. Gluba's name. I never
5 met her.

6 Q. When you say she was out for a
7 long time, how did that come to your attention
8 that she was out for a long time?

9 A. When an employee gets hurt on the
10 job or in a government vehicle -- she was very
11 hurt. She was extremely critical at one
12 time -- I am notified.

13 Q. Did you ever see Ms. Gluba face to
14 face?

15 A. No. As I said, I never met her.

16 Q. Do you know her race?

17 A. No, I don't know her race.

18 Q. In the course of your
19 investigating aspects of this underlying case,
20 either my client's case or the allegations
21 relating to Haq, did you come by the name of
22 Gluba?

23 MR. CLOPPER: Objection.

24 Attorney-client privilege.

25 MR. OKOLI: Attorney-client

1 MITCHELL

2 privilege?

3 MR. CLOPPER: Yes. To the extent
4 you are asking her to reveal
5 conversations between herself and her
6 attorney, me, I am objecting and
7 instructing her not to answer.

8 MR. OKOLI: I am not asking her to
9 reveal conversations. I am saying
10 whether she came by the name other than
11 in the context of this incident that she
12 talked about.

13 MR. CLOPPER: She can answer how
14 she came by the name to the extent it
15 doesn't reveal attorney-client
16 conversations.

17 Q. Can you answer the question,
18 please?

19 A. I don't recall.

20 Q. As you sit here today, do you know
21 whether my client alleged that Ms. Gluba
22 revealed sensitive government information to
23 members of the public?

24 A. Yes. I think that is what
25 Mr. Angevine said.

1 MITCHELL

2 Q. And did you investigate that issue
3 whether or not Ms. Gluba revealed sensitive
4 government information to members of the
5 public?

6 A. I asked the area director to look
7 into that allegation as well.

8 Q. What was the outcome of that?

9 A. There was nothing that was brought
10 to my attention in that case.

11 Q. The area director you are talking
12 about is Kathleen Haage?

13 A. Yes.

14 Q. So no one advised you as to
15 whether or not Ms. Gluba revealed government
16 information to members of the public?

17 A. I know there was an allegation.
18 Now that you have refreshed my memory, I know
19 it was looked into and it was not raised to me
20 as an open issue.

21 Q. But you asked somebody to
22 investigate it?

23 A. I asked Ms. Haage to investigate
24 that, correct.

25 Q. Did you ask Ms. Haage for the

1 MITCHELL

2 result of her investigation?

3 A. I was advised that the case was
4 closed.

5 Q. Did you ask her why the case was
6 closed?

7 A. No, I did not.

8 Q. Did she tell you?

9 A. I believe it was handled at her
10 level, handled at the level below me.

11 Q. But the question is this: She did
12 not take action of her own volition? You
13 instructed her to take action to look into the
14 matter?

15 A. To look into the matter, yes.

16 Q. And you didn't ask her whether or
17 not the matter you asked her to look into was
18 proven or not proven?

19 A. She told me it was taken care of,
20 that it had been reviewed.

21 Q. Did you understand that it was not
22 established or that it was established? What
23 was your understanding?

24 A. My understanding was that an
25 incident did occur and it was handled at a

1 MITCHELL

2 level lower than myself.

3 Q. Your understanding was that an
4 incident occurred?

5 A. Correct.

6 Q. What did you understand occurred?
7 What incident, quote-unquote, did you
8 understand occurred?

9 A. I never got a copy of the case
10 file because I was advised that any actions
11 that needed to be taken were already handled
12 below me.

13 Q. And the person who handled it
14 below you is somebody you supervised; correct?

15 A. Yes.

16 Q. When you say it was handled, what
17 specifically do you mean?

18 A. I was advised by my senior manager
19 that it was handled.

20 Q. Okay. And did you get the sense
21 of whether or not Ms. Gluba was disciplined
22 for it or not?

23 A. I got the sense that there was
24 discipline taken.

25 Q. What discipline did you learn was

1 MITCHELL

2 taken?

3 A. I don't know the results.

4 Q. As you sit here today, you still
5 don't know the results?

6 A. Not from my conversation with
7 Ms. Haage. I do not know the results.

8 Q. Regardless of what -- I'm saying
9 as you sit here today, you don't know the
10 results. Is that correct?

11 A. Any knowledge that I might have
12 was based on a conversation with my attorney.

13 Q. When you say based on a
14 conversation with your attorney, let me ask
15 you this. Did you ever learn that your
16 attorney was present when the incident
17 involving Gluba occurred?

18 A. Not that I know of.

19 Q. Did you learn that your attorney
20 ever spoke with Haage?

21 A. Not that I know of.

22 Q. The investigation that was
23 conducted was conducted within Customs and
24 Border Protection; correct?

25 A. Correct.

1 MITCHELL

2 Q. And your attorney was given
3 information from Customs and Border
4 Protection?

5 MR. CLOPPER: Objection. Lack of
6 personal knowledge. She doesn't know
7 where the attorney got the information.

8 MR. OKOLI: You don't have to give
9 a speaking objection.

10 Q. Now, do you have any reason to
11 believe that your attorney had personal
12 knowledge of what happened to Gluba?

13 A. Yes. I believe my attorney has
14 personal knowledge of what happened or has
15 knowledge of it. I don't know.

16 Q. I am asking you -- please listen
17 to the question.

18 A. I don't understand the question.

19 MR. CLOPPER: Mr. Okoli, hold on a
20 second. I object and --

21 MR. OKOLI: No, no. If you have
22 an objection, put your objection but --

23 MR. CLOPPER: My objection is,
24 you're inquiring into attorney-client
25 communications. It is privileged, and

1 MITCHELL

2 she told you she has no knowledge of
3 Ms. Gluba's discipline.

4 MR. OKOLI: Okay.

5 MR. CLOPPER: There's documents
6 that bear on this issue. I am not quite
7 sure where we are going with this.

8 Q. Just to be clear, you asked
9 Ms. Haage to look into the allegation that
10 Ms. Gluba had revealed sensitive government
11 information; correct?

12 A. Correct.

13 Q. And you never found out
14 specifically from Ms. Haage what her
15 conclusion was as a result of the
16 investigation?

17 A. I didn't say that.

18 Q. Did you find out from Ms. Haage
19 what she found as a result of her
20 investigation?

21 A. Yes, I did.

22 Q. What did she tell you she found?

23 A. That sensitive information was not
24 revealed to members of the traveling public.

25 Q. Did you say that some discipline

1 MITCHELL

2 was given to Gluba?

3 A. Yes, I did.

4 Q. What was the basis for the
5 discipline that was given to Gluba if no
6 information was revealed to the traveling
7 public?

8 A. I don't have a copy of the file.
9 I never saw the file. I don't know what the
10 charges were. It was handled at a level below
11 me.

12 Q. You never asked to see the
13 charges?

14 A. Absolutely not.

15 Q. Is Ms. Gluba still working for the
16 Customs?

17 A. To my knowledge, yes.

18 Q. If it were true that Ms. Gluba
19 reviewed sensitive information to the public
20 at a time that she was on probation, will
21 that, in your judgment, merit a termination?

22 A. I would have to see the entire
23 case file and find out the circumstances. I
24 don't make broad-based decisions.

25 Q. I am asking you a hypothetical

1 MITCHELL

2 question. My question is, let's say -- I am
3 not saying it happened. You said it did not
4 happen. There was no revelation of sensitive
5 information. That's your answer.

6 Then my question is, if indeed
7 there were revelations of sensitive
8 information by this probationary employee to a
9 member of the public, would that, in and of
10 itself, be sufficient to terminate her
11 employment?

12 MR. CLOPPER: Objection. It is
13 unclear.

14 Q. Did you find out from Ms. Haage
15 whether, at the time the incident was alleged
16 to have occurred, whether Ms. Gluba was on
17 probation or a permanent employee?

18 A. Yes.

19 Q. What did you find out?

20 A. She was a probationary employee.

21 Q. Now, being a probationary
22 employee, if it were established that indeed
23 she revealed information to the public that
24 shouldn't be known to the public, will that be
25 sufficient to terminate her employment during

1 MITCHELL

2 her probation?

3 A. It would have to be case specific.
4 Perhaps, perhaps not. It is dependent on the
5 circumstances of the case.

6 Q. Thank you. Is Ms. Gluba still on
7 probation?

8 A. No.

9 Q. By the way, what is Kathleen
10 Haage's race?

11 A. She is white.

12 Q. Do you know Ms. Gluba's current
13 title?

14 A. CBPO.

15 Q. Just to be clear, you did not
16 become aware of the claim or allegation that
17 Ms. Gluba had revealed sensitive information
18 to the public until my client raised it in the
19 course of the investigation of her claim.
20 Correct?

21 A. Correct.

22 Q. Now, you said Ms. Haage did this
23 investigation and told you it was handled at
24 her level. Correct?

25 A. Correct.

1 MITCHELL

2 MR. OKOLI: Okay. Even though I
3 will put it in writing, I want to have
4 every memoranda relating to Ms. Haage's
5 investigation of Ms. Gluba's situation or
6 the investigation by anyone else at
7 Customs relating to the allegation of
8 Ms. Gluba revealing sensitive
9 information.

10 Q. Do you know an employee by the
11 name of Elba Mendez?

12 A. Not personally.

13 Q. Do you know of Elba Mendez?

14 A. Yes.

15 Q. How did you come to know of her?

16 A. Your client's allegations.

17 Q. And what did you learn were my
18 client's allegations against Ms. Mendez?

19 A. I believe that Ms. Mendez had been
20 involved in a similar situation.

21 Q. When you say "similar situation,"
22 would you be more specific to the best that
23 you recall?

24 A. I believe the allegation was that
25 she also met family members arriving on a

1 MITCHELL

2 flight.

3 Q. At a gate area?

4 A. I don't know that that was part of
5 the allegation.

6 Q. As a result of that allegation,
7 did you take any steps?

8 A. I referred the allegations to the
9 area director.

10 Q. And who would the area director be
11 in that case?

12 A. Kathleen Haage.

13 Q. Do you recall when it was that you
14 referred the allegation to the area director?

15 A. That day or the next day when
16 Mr. Angevine gave me the list of allegations.
17 It was the exact same time.

18 Q. When you referred this allegation
19 to Ms. Haage, did you do that by memo or was
20 it just verbal?

21 A. Verbal.

22 Q. Did you give her any documents in
23 connection with the verbal instruction that
24 you gave her?

25 A. No.

MITCHELL

Q. What was it that you told
Ms. Haage to do?

A. To look into the allegations.

Q. Did you give her a time limit
within which to look into the allegations?

A. No.

Q. Do you know whether she looked
into the allegations?

A. I trust that she did, yes.

Q. Did you find out from her what she
found as a result of looking into the
allegations?

A. I don't know of any results.

Q. So she never told you the outcome
of the allegations?

A. Not that I recall.

Q. I take it there was nothing in
writing from Ms. Haage telling you about what
she did regarding Ms. Mendez?

A. Correct.

Q. And as you stated earlier, you
never wrote anything to her. It was some kind
of verbal instruction to her to look into the
situation?

1 MITCHELL

2 A. To look into the situation,
3 correct.

4 Q. Did you ever question Ms. Mendez?

5 A. No.

6 Q. Did you ever ask Ms. Haage why you
7 did not get a feedback from her regarding
8 Ms. Mendez?

9 A. No.

10 Q. If Ms. Mendez -- is Ms. Mendez
11 still employed by the CBP?

12 A. I believe so.

13 Q. If Ms. Mendez met relatives at a
14 restricted area, would you see a similarity
15 between that and Ms. Akinyemi's situation?

16 MR. CLOPPER: Objection,
17 ambiguous.

18 Q. Is the gate area a restricted area
19 at the airport for somebody who is not on
20 duty?

21 A. The gate area is the -- are you
22 talking inbound flights or outbound flights?
23 I'm not exactly sure what you are talking act.

24 Q. Let's deal with both. For a
25 person, a customs officer, not on duty and not

1 MITCHELL

2 flying, would the gate area, the arrival gate
3 area, be a restricted area for that off-duty
4 customs officer?

5 A. That is defined as a customs
6 restricted area, correct.

7 Q. If it were an outbound flight and,
8 again, if a customs officer was not on duty
9 and not flying and not a passenger, would that
10 be a restricted area?

11 A. It is restricted. It is not a
12 customs restricted area, but it is a
13 restricted area.

14 Q. So in a customs restricted area,
15 would it permit customs officers off duty to
16 be there?

17 A. It would depend on the situation,
18 if they ask permission.

19 Q. If a customs officer who is not on
20 duty did not ask permission, are they entitled
21 to be there to meet someone?

22 A. If they did not ask permission?

23 Q. Yes.

24 A. Yes, they are not entitled to be
25 there if they are off duty and did not ask for

1 MITCHELL

2 permission.

3 Q. Okay. Even though this allegation
4 was made by my client, as you sit here today,
5 you do not know any specific facts as to
6 whether it happened or it didn't happen with
7 regard to Elba Mendez?

8 A. I do not know.

9 Q. So even as you sit here today, you
10 have no information one way or the other as to
11 whether Ms. Mendez, in the summer of 2005, met
12 relatives at --

13 MR. CLOPPER: Objection. Asked
14 and answered.

15 A. I have no knowledge.

16 Q. Do you know Ms. Mendez's race?

17 A. No, I don't.

18 Q. Do you know her national origin?

19 A. No, I don't.

20 Q. Do you know of Gilbert Murphy? Do
21 you know of any customs employee whose name is
22 Gilbert Pat Murphy?

23 A. I know of that name.

24 Q. How did you come to know of that
25 name?

1 MITCHELL

2 A. Your client made an allegation
3 against him as well.

4 Q. Do you recall specifically what
5 allegation my client made against him?

6 A. That he met family members at a
7 crews terminal.

8 Q. Do you recall which crews
9 terminal?

10 A. No.

11 Q. From the allegation, do you recall
12 whether my client said that she was actually
13 present and observed it herself?

14 A. No, I don't recall that.

15 Q. Did you investigate the
16 allegation?

17 A. I referred it to the area
18 director.

19 Q. The area director again would be
20 Kathleen Haage?

21 A. Same area director.

22 Q. And this reference was made
23 verbally?

24 A. Correct.

25 Q. All the references you made to her

1 MITCHELL

2 in connection with investigating the
3 underlining complaints or allegations by my
4 client were done verbally?

5 A. Yes.

6 Q. Okay. So in relation to that of
7 Mr. Murphy, it was also a verbal reference to
8 Ms. Haage to investigate it?

9 A. Correct.

10 Q. And did Ms. Haage come back to you
11 to tell you the results of the investigation?

12 A. No. I did not hear anything about
13 it.

14 Q. How soon after you learned of the
15 allegation did you make this reference to
16 Ms. Haage to investigate Mr. Murphy's
17 situation?

18 A. As I said before, all the
19 allegations were made to me by Mr. Angevine at
20 the same time and they were all referred to
21 Ms. Haage at the same time.

22 Q. Where is Ms. Haage now?

23 A. Retired.

24 Q. So from the time that you referred
25 these three allegations to Ms. Haage until her

1 MITCHELL

2 retirement, you never asked her the outcome of
3 the investigation?

4 A. No.

5 Q. Do you know whether Mr. Murphy, in
6 the summer of 2005, was a permanent employee
7 or a probationary employee?

8 A. My understanding is that he was
9 not a probationary employee. He was a
10 permanent employee.

11 Q. As you sit here today, do you know
12 approximately how long Mr. Murphy had worked
13 for Customs?

14 A. I have no idea.

15 Q. As you sit here today, would you
16 expect an employee who's worked for Customs
17 for at least eight years to know that they
18 should not be in the restricted area without
19 authorization or permission?

20 A. What did you say? I didn't hear
21 how long.

22 Q. Yes. As you sit here today, do
23 you know whether an employee of Customs or
24 CBP -- when I say "Customs," I am talking
25 about CBP -- who's been employed for eight

1 MITCHELL

2 years and is a permanent employee should know
3 not to go to a restricted area without
4 permission or authorization?

5 A. I believe all employees should
6 know that, right.

7 Q. Ms. Akinyemi's allegation was that
8 Mr. Murphy had gone to meet a family member at
9 a crews terminal?

10 A. Correct.

11 Q. When you say "crews terminal," a
12 restricted area?

13 A. Parts of it are.

14 Q. In either of the cases of
15 Mr. Murphy, Ms. Mendez, Ms. Haq or Ms. Gluba,
16 did you attempt to question Ms. Akinyemi?

17 A. No.

18 Q. Do you know whether Ms. Haage
19 attempted to question Ms. Akinyemi for more
20 detail regarding any of these allegations?

21 A. I have no idea.

22 Q. Did you ever question Mr. Murphy
23 about the allegations?

24 A. No.

25 Q. So as you sit here today, you

1 MITCHELL

2 still have not questioned Mr. Murphy regarding
3 this allegation?

4 A. No.

5 Q. And you don't have any report back
6 from Ms. Haage as to what she found out as a
7 result of her investigation?

8 A. No.

9 Q. Okay. Just quickly to go back,
10 you never met and spoke with Ms. Gluba
11 regarding the allegation. Correct?

12 A. No, I did not.

13 Q. And you did not meet and speak
14 with Ms. Mendez regarding the allegation
15 against her either?

16 A. No, I did not.

17 Q. How did you come to learn about
18 Ms. Akinyemi?

19 A. Say that again?

20 Q. How did you come to know about
21 Ms. Yemisi Akinyemi?

22 A. About her allegations or about her
23 misconduct? I am not sure.

24 Q. When did you first hear the name
25 Yemisi Akinyemi?

1 MITCHELL

2 A. Okay. I was advised that an
3 incident had occurred by the area director.

4 Q. And when did you receive this
5 information?

6 A. I believe it was two days after
7 the incident occurred because Internal Affairs
8 was being notified.

9 Q. And what was the incident you
10 heard from the area director that had
11 occurred?

12 A. That Officer Akinyemi had bypassed
13 security and, while off duty and in full
14 uniform, was in a restricted area by the
15 outbound gates at Newark Airport.

16 Q. The person you received this
17 information from was Ms. Haage?

18 A. Correct.

19 Q. Two days after it had occurred?

20 A. Correct.

21 Q. And this information, how did you
22 receive it? Was it over the phone, in person,
23 or in writing?

24 A. Over the phone.

25 Q. And what did you do as a result of

1 MITCHELL

2 that?

3 A. I told them to follow up with
4 Internal Affairs and to prepare an
5 investigative report or to prepare a file on
6 it.

7 Q. Was a file prepared?

8 A. The only file I saw was the
9 statements that were taken in relation to the
10 incident.

11 Q. When you say "the statements that
12 were taken," statements that were taken from
13 who?

14 A. The list that we went through
15 earlier.

16 Q. The officers who were --

17 A. The two officers that met her at
18 the gate, Supervisor Herter and Supervisor
19 Landau, Supervisor Calise and the two
20 statements from your client.

21 Q. Did you learn whether or not it
22 was true that Ms. Akinyemi had lost her
23 father-in-law that morning?

24 A. I did not find out whether or not
25 that was true.

1 MITCHELL

2 Q. Did you find out whether she had
3 permission to leave work early to go see her
4 husband off at the airport?

5 A. I did find out about that.

6 Q. Did you find out what that was
7 or --

8 A. It was true that she was excused
9 for 59 minutes to go to the airport.

10 Q. Who was it that you found out
11 excused her?

12 A. Supervisor Landau.

13 MR. OKOLI: I'd like to have
14 marked for identification a document from
15 the Department of Treasury, U.S. Customs
16 Service.

17 (Whereupon, the aforementioned
18 document was marked as Plaintiff's
19 Exhibit 1 for identification as of this
20 date by the Reporter.)

21 Q. Would you please take a look at
22 Plaintiff's Exhibit 1 and tell me if you
23 recognize what that document is?

24 A. I am looking at a document that's
25 marked as Exhibit 1, Plaintiff's Exhibit 1.

1 MITCHELL

2 (Pause.)

3 A. Okay. What is your question?

4 Q. Do you recognize what Exhibit 1
5 is?

6 A. It is a notice. It is called a
7 general notice.

8 Q. Have you seen a similar document
9 before today?

10 A. I have seen them before, yes.

11 Q. Does that document indicate that
12 it was for the investigation of the misuse of
13 position by Ms. Akinyemi?

14 A. Yes, that is what it says.

15 Q. So what Ms. Akinyemi was being
16 investigated for was not a possible criminal
17 misconduct?

18 A. No, that is correct. It is
19 checked off this interview was not related to
20 possible criminal misconduct.

21 Q. And it is not related to a matter
22 that is criminal?

23 A. That is also checked off, correct.
24 It say the general nature is administrative.

25 Q. What did you find out as a result

1 MITCHELL

2 of the investigation that you asked

3 Ms. Haage?

4 A. I am handing you back Exhibit 1.

5 (Handing document.)

6 A. What investigation?

7 Q. When you asked Ms. Haage to look

8 into the matter of Ms. Akinyemi, did there

9 come a time when you got a feedback from

10 Ms. Haage?

11 A. The feedback that I got was from

12 Ms. Haage that an incident did occur, that she

13 was gathering the statements, and that she was

14 then going to forward them to labor and

15 employee relations.

16 Q. Did there come a time when

17 Ms. Akinyemi was terminated?

18 A. Yes.

19 Q. Were you the person who made the

20 decision to terminate Ms. Akinyemi?

21 A. Yes, I was.

22 Q. Did you convey this termination in

23 writing?

24 A. Yes, I did.

25 MR. OKOLI: Could you mark this

1 MITCHELL

2 for identification?

3 (Whereupon, the aforementioned
4 documents were marked as Plaintiff's
5 Exhibit 2 for identification as of this
6 date by the Reporter.)

7 MR. CLOPPER: Let us take a
8 five-minute break, Mr. Okoli.

9 MR. OKOLI: Sure.

10 (Whereupon, a recess was taken.)

11 MR. OKOLI: Okay. Just mark all
12 of these as well.

13 (Whereupon, the aforementioned
14 documents were marked as Plaintiff's
15 Exhibits 3 through 11 for identification
16 as of this date by the Reporter.)

17 Q. Now, I am placing before you what
18 has been marked as Plaintiff's Exhibit 2. Do
19 you recognize what it is?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is the notice of termination to
23 Ms. Akinyemi.

24 Q. And did you sign it on the second
25 page of it?

1 MITCHELL

2 A. Yes, I did.

3 Q. That is your signature?

4 A. Yes, it is.

5 Q. In the last full paragraph, I
6 believe the third sentence --

7 MR. CLOPPER: On the second page?

8 MR. OKOLI: On the first page.

9 MR. CLOPPER: I am sorry.

10 Q. (Continued) It says: "These
11 policies are detailed in the standard of
12 conduct, Section 6.3.5. Your misuse of
13 position and authority jeopardized and
14 tarnished how the public views CBP and its
15 employees."

16 Do you see that?

17 A. Yes, I do.

18 Q. Could you give us the facts on
19 which you based the conclusion that the misuse
20 of position and authority jeopardized and
21 tarnished how the public views CBP and its
22 employees?

23 A. In this case?

24 Q. Yes.

25 A. Sure. Based on the statements

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1
2 that I read and the details of the incident,
3 Ms. Akinyemi used her position and bypassed
4 TSA screening in full view of the traveling
5 public and entered an area that only traveling
6 members of the traveling public, ticketed
7 passengers or authorized employees on official
8 business are allowed to be in. That was done
9 in the full view of the public.

10 Q. Did you speak with any members of
11 the public regarding whatever it is that
12 happened at the airport on that day?

13 A. No.

14 Q. In any of the documents you read
15 in which you based your decision, did any of
16 those people -- Mr. Herter or the two
17 officers -- tell you that they spoke with any
18 members of the public regarding what
19 Ms. Akinyemi was alleged to have done?

20 A. There was a conversation, I
21 believe, one of the statements mentioned, a
22 conversation with an airline employee.

23 Q. What was that conversation? What
24 did the airline employee say in the
25 conversation?

1 MITCHELL

2 A. I don't have the statement in
3 front of me.

4 Q. In whose statement was that?

5 A. One of the two officers, I
6 believe, that were there the night of the
7 incident.

8 Q. Was it Alelong or Jozeck
9 (phonetic)?

10 A. I don't know.

11 Q. Is it your recollection that that
12 airline employee expressed an opinion as to
13 what Ms. Akinyemi did at the airport?

14 A. I don't recall. I just --

15 MR. CLOPPER: Objection. I mean
16 to the extent you are suggesting that
17 that is what she said. That is not an
18 accurate quotation or reflection of her
19 testimony.

20 MR. OKOLI: No. I am asking the
21 question because I am interested in the
22 portion that says jeopardized and
23 tarnished how the public views CBP and
24 its employees.

25 She said she didn't speak to any

1 MITCHELL

2 members of the public. With the
3 exception of this possible airline
4 employee, the statements that she is
5 referring to did not say the traveling
6 members of the public either. I want to
7 know the basis for this statement.

8 MR. CLOPPER: Okay.

9 Q. In the first full paragraph of
10 page 2 beginning with furthermore, it says:
11 "Furthermore, in order to accomplish its
12 mission, CBP must be able to trust and depend
13 on its employees to conduct themselves in an
14 appropriate manner at all times."

15 Do you see that?

16 A. Yes, I do.

17 Q. What mission of CBP were you
18 referring to in that paragraph?

19 A. Are you asking me what is CBP's
20 mission?

21 Q. No. What mission are you
22 referring to here? What mission of CBP were
23 you referring to when you said "in order to
24 accomplish its mission"?

25 A. That actually means the entire

1 MITCHELL

2 mission of CBP. The mission of CBP is to
3 detect and deter terrorists and terrorist
4 weapons from entering and to enforce the laws
5 of the United States, to interdict
6 contrabands, narcotics, agriculture products,
7 and to facilitate legitimate trade and travel.
8 That is the mission of CBP.

9 Q. What specifically did Ms. Akinyemi
10 do on that day that you considered an anathema
11 to the accomplishment of the mission of CBP?

12 A. Well, I believe the misuse of
13 position to gain access to an area where the
14 normal public cannot is an anathema to that
15 mission. If the mission is to protect and
16 defend the country, not to bypass security,
17 the very security that was set up, she used
18 the trappings of her office to bypass.

19 Q. You do not believe that she was
20 acting as a terrorist though; did you?

21 A. I believe she bypassed security
22 and used her position to -- the trappings of
23 her office to do that.

24 Q. Do you think that by her,
25 Ms. Akinyemi, doing that, that would encourage

1 MITCHELL

2 terrorism?

3 A. No. I think it is an anathema to
4 our mission.

5 Q. What specific mission?

6 A. The mission is to protect and
7 defend the border and she undermined that
8 position by misuse of her position.

9 Q. In what way was the border
10 unprotected by her getting into the restricted
11 area to see her husband off?

12 MR. CLOPPER: Objection. That
13 mischaracterizes the witness' testimony.

14 Q. I am asking, in what way do you
15 believe that Ms. Akinyemi going into the
16 restricted area as a customs officer
17 undermines the mission of Customs to protect
18 the citizens?

19 A. She did not. She did not do this
20 as a customs officer. Therein lies the
21 problem. She used the trappings of the
22 customs office to do that. She was not acting
23 as a customs officer when she did that.

24 Q. Was she employed by Customs as of
25 the time she was doing that?

1 MITCHELL

2 A. She was off duty, yes.

3 Q. But she was an employee of
4 Customs; wasn't she?

5 A. Absolutely.

6 Q. Okay. Do you know what an AOA
7 badge means?

8 A. Yes. It is an airport operator's
9 authorization badge.

10 Q. Okay. And what does that do for
11 you? I mean, what is it used for? What is
12 the AOA badge used for?

13 A. It is issued by airport
14 authorities to give access to secure areas,
15 various areas of an airport, for official
16 business.

17 Q. You said the AOA badge is issued
18 by the Port Authority; correct?

19 A. In this case, it is by the Port
20 Authority.

21 Q. And they determine what area is
22 restricted and unrestricted; correct?

23 A. They don't determine. That
24 determination is made by a variety of
25 entities, law enforcement entities. It can

1 MITCHELL

2 either be the FAA, and those regulations are
3 articulated in the FAR or it could be by
4 Customs and Border Protection.

5 TSA also has some areas that they
6 have designated as security areas. So it is a
7 variety of law enforcement entities that
8 determine that.

9 Q. I did not ask the question
10 correctly. If you did not have an AOA badge
11 and you are an Immigrations or Customs
12 officer, could you access the restricted area?

13 A. If you are on official business
14 and you explain what you are doing, they would
15 probably, if you tried to access that area,
16 they would probably call a supervisor over if
17 you were on official business and needed to
18 get to that area to accomplish your work.

19 Q. They would investigate to find out
20 whether you should be there; correct?

21 A. Correct, if you didn't have one.

22 Q. If you had an AOA badge, that will
23 give you automatic access to such areas that
24 you don't really have access to. Correct?

25 A. If you are on official business,

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correct.

Q. So is it fair to say that you do not have to be a customs officer to be able to get into certain restricted areas if you have an AOA badge?

A. And you are on official business, correct.

Q. Okay. Did you know that Ms. Akinyemi had worked for FedEx before coming to work for the Customs and Border Protection?

A. No, I did not know that.

Q. Did you know that she had an AOA badge as an employee of FedEx?

A. I don't know that for a fact.

Q. But you do know that there are other people who have access to restricted areas with AOA badges who are not CBP officers? You do know that?

A. Sure, as long as it is related to their employment, absolutely.

Q. Given your answer a few moments ago that if you didn't have an AOA badge and you went there as a customs officer and wanted

1 MITCHELL

2 to access those areas that may trigger the
3 call to a supervisor to see whether you should
4 be there, do you believe that she was able to
5 access the area solely because of his uniform
6 or because he had an AOA badge on him?

7 MR. CLOPPER: Objection. You mean
8 Ms. Akinyemi?

9 MR. OKOLI: Ms. Akinyemi, yes.
10 Sorry.

11 A. I don't know what the TSA was
12 thinking when they let her by, but I know she
13 was standing in a uniform and her AOA badge
14 that was issued to her for her official duty
15 while working for Customs and Border
16 Protection.

17 Q. Is someone on a break considered
18 to be on duty or off duty?

19 A. (No response.)

20 Q. If a person is on duty on a
21 certain day and during that person's break
22 period, is that person considered on duty or
23 off duty?

24 A. They are on duty.

25 Q. Even during their break period?

1 MITCHELL

2 A. Oh, absolutely. They are being
3 paid. They are on duty.

4 Q. As you sit here today, do you know
5 whether any customs employees have ever
6 accessed a restricted area and were not
7 terminated for that?

8 A. In the course of their business,
9 they access restricted areas every day.

10 Q. I am talking about those not on
11 duty, a customs officer not on duty gaining
12 access to a restricted area and not being
13 fired?

14 A. I --

15 MR. CLOPPER: Objection. It is
16 ambiguous.

17 MR. OKOLI: Well, let me rephrase
18 it.

19 MR. CLOPPER: Yes.

20 Q. As you sit here today, are you
21 aware of any instances in which a customs
22 officer not on duty accessed a restricted area
23 and yet was not fired?

24 A. Yes. I do have personal knowledge
25 of an incident like that.

1 MITCHELL

2 Q. How many such incidents are you
3 aware of?

4 A. I have personal knowledge of one
5 specific incident.

6 Q. What is that incident that you are
7 aware of?

8 A. It was an employee who was not on
9 duty and bypassed security and accessed a
10 restricted area at Newark Airport.

11 Q. Do you know the name of this
12 employee?

13 A. Jill Von Wolkenn.

14 Q. Could you spell that?

15 A. J-i-l-l, next name V-o-n, next
16 name W-o-l-k-e-n-n.

17 Q. That is a female, Jill? You said
18 Jill?

19 A. Yes.

20 Q. That is a female?

21 A. Yes, it is.

22 Q. When did this occur?

23 A. Several years ago at Newark
24 Airport.

25 Q. When you say "several years ago,"

1 MITCHELL

2 less than five years ago, more than five years
3 ago?

4 A. Less than five years ago.

5 Q. What was the outcome of that?

6 A. She was disciplined.

7 Q. What discipline was imposed on
8 her?

9 A. There were several charges
10 involved, and I believe it was a proposed
11 14-day suspension.

12 Q. Did you say there were several
13 charges?

14 A. Correct.

15 Q. In addition to accessing a
16 restricted area, she did other things that
17 were considered inappropriate by Customs? Is
18 that what you are saying?

19 A. Correct.

20 Q. How many additional things? I
21 mean two more or three more in addition to --

22 A. She also argued with the security
23 company and she used the agency letterhead
24 inappropriately.

25 Q. When you say she used the agency

1 MITCHELL

2 letterhead, what did she do?

3 A. (No response.)

4 Q. What is your recollection of what
5 she did with it?

6 A. She wrote a letter of complaint to
7 the Port Authority police.

8 Q. With the agency letterhead?

9 A. Correct.

10 Q. And this got her 14 days
11 suspension?

12 A. That was her proposal.

13 Q. And what was the final outcome?

14 A. There was a five-day suspension.

15 Q. So for these offenses, she got a
16 total of five days suspension?

17 A. That was the decision, yes.

18 Q. At the time, were you the director
19 of field operations?

20 A. Yes, I was.

21 Q. And what is Jill Von Wolkenn's
22 race?

23 A. She is white.

24 Q. Do you know her national origin?

25 A. No, I don't.

1 MITCHELL

2 Q. So other than Jill Von Wolkenn's
3 case, are you aware of any other incident
4 while you were a director of field operations,
5 not which you have personal knowledge because
6 you said you have personal knowledge of this,
7 but are you aware of any other incident in
8 which it was alleged that someone had accessed
9 restricted areas while not on duty?

10 A. Not that I recall.

11 MR. CLOPPER: Excuse me. When the
12 person was not disciplined or not
13 terminated?

14 MR. OKOLI: Not terminated.

15 MR. CLOPPER: Okay. Is that your
16 question?

17 MR. OKOLI: Yes.

18 MR. CLOPPER: Whether she's aware
19 of any person who accessed a restricted
20 area while off duty and not terminated?

21 MR. OKOLI: Yes.

22 Q. You are not aware of that?

23 A. No.

24 Q. Are you aware of anyone who
25 accessed the restricted area that was not

1 MITCHELL

2 disciplined?

3 A. I don't -- I can't recall any that
4 I know of.

5 Q. Could you take a look at
6 Plaintiff's Exhibit 11?

7 A. I am giving back Plaintiff's
8 Exhibit 2.

9 (Witness handing.)

10 Q. Well, before we get into
11 Plaintiff's Exhibit 11, what was Ms. Von
12 Wolkenn's title at the time that this incident
13 occurred?

14 A. At the time that the incident
15 occurred, she was an immigration inspector.

16 Q. She was an immigration inspector?

17 A. Correct. At the time of that
18 incident, she was an immigration inspector.

19 Q. But she was employed by the CBP?

20 A. Not at the time of that incident.
21 CBP had not been created yet.

22 Q. She was --

23 A. At the time of discipline, she was
24 employed by CBP.

25 Q. At the time of the incident, was

1 MITCHELL

2 she employed by U.S. Customs?

3 A. No, she was not. She was employed
4 by INS.

5 Q. I see, okay. Did you say she
6 used -- pardon me if I asked this. What
7 letterhead did you say she used?

8 A. At the time of the incident, she
9 used the INS letterhead.

10 Q. Okay.

11 A. But the agency letterhead is the
12 wording I used.

13 Q. Do you know whether she was a
14 permanent employee or a probationary employee
15 at the time?

16 A. She was a permanent employee not
17 in uniform.

18 Q. Now, back to Plaintiff's Exhibit
19 11, do you recognize what that is?

20 A. Yes, I do.

21 Q. Did you provide that unsworn
22 declaration?

23 A. Yes, I did.

24 Q. Is that your signature on page 139
25 at the bottom?

1 MITCHELL

2 A. Yes.

3 Q. On page 139?

4 A. Yes.

5 Q. That is your signature?

6 A. Correct.

7 Q. Is everything that you stated in

8 Exhibit 11 correct?

9 A. I believe so.

10 Q. Thank you.

11 MR. CLOPPER: Wait a minute.

12 Let's clarify, if you don't mind.

13 MR. OKOLI: Yes.

14 MR. CLOPPER: Or I can follow up.

15 She hasn't read the declaration as we are

16 sitting here today.

17 Q. At the time that you gave the

18 declaration, did you believe you were giving

19 correct information?

20 A. Yes.

21 Q. Okay, thank you. Did you review

22 your declaration from the time you knew you

23 were going to testify here to today?

24 A. I am sure I read through it again.

25 Q. Do you recall when it was that you

1 MITCHELL

2 last read through it?

3 A. Sometime last week, I believe.

4 Q. Do you know who Scott Hobbs is?

5 A. Yes, I recognize the name.

6 Q. Who is that?

7 A. He was an employee with CBP.

8 Q. And he is no longer an employee?

9 A. No, he is not.

10 Q. He was terminated?

11 A. I believe so.

12 Q. Do you recall why he was

13 terminated?

14 A. I don't recall right now.

15 Q. Let me put Plaintiff's Exhibit 11

16 before you.

17 (Hanging.)

18 A. Okay.

19 Q. Could you turn to page 137?

20 (Witness complying.)

21 Q. Just review pages 137 through 138

22 and I will ask you questions.

23 (Pause.)

24 A. Okay.

25 Q. Do you know whether Scott Hobbs

1 MITCHELL

2 was terminated for a crime?

3 A. No.

4 Q. Does your review of page 137
5 refresh your recollection as to whether he was
6 terminated for second-degree burglary?

7 A. He was terminated for being
8 arrested for second-degree burglary.

9 Q. For being arrested for a crime?

10 A. Correct.

11 Q. Okay.

12 A. And harassing a neighbor.

13 Q. And Michelle Cronin, do you recall
14 the underlining facts of her termination?

15 A. No, just what it says here in the
16 statement.

17 Q. So you have no recollection of the
18 facts that constitute acting unprofessionally
19 on the job?

20 A. Specifically in her case, no, I
21 don't. I don't have the underlining facts.

22 Q. Okay. I can have that back.

23 (Witness handing.)

24 MR. CLOPPER: Returning

25 Plaintiff's Exhibit 11.

1 MITCHELL

2 Q. I am placing before you what is
3 marked Plaintiff's Exhibit 3. Do you
4 recognize Plaintiff's Exhibit 3?

5 A. It is a letter that I signed.

6 Q. Do you know who you sent it to?

7 A. No.

8 MR. OKOLI: Counsel, I will ask
9 for an unredacted copy of this letter
10 which is marked, I believe it is, 166
11 through 168.

12 Q. Could you review the letter, and
13 then I will ask you a few questions?

14 (Witness complying.)

15 A. Okay.

16 Q. Was this employee on probation at
17 the time?

18 A. Based on the letter, yes.

19 Q. Was this employee terminated for
20 repeatedly failing to comply with overtime
21 policy?

22 A. Yes, that is what it says here.

23 Q. This person was scheduled for
24 overtime and didn't show up?

25 A. There's several specifications,

1 MITCHELL

2 right.

3 Q. So it is more than one incident
4 and more than one date that this occurred?

5 A. Based on this letter, yes.

6 Q. Other than the incident that
7 occurred on December 5th, was Ms. Akinyemi
8 terminated for anything else other than the
9 incident that occurred on December 5th?

10 A. She was terminated for the misuse
11 of her position on that date. That is it.

12 Q. May I have that?

13 A. Yes, returning Exhibit 3.

14 (Witness handing.)

15 Q. I am placing before you Exhibit 4.
16 Do you recognize Exhibit 4?

17 A. It is another letter signed by
18 myself dated June 20, 2005.

19 Q. Do you know who it was sent to?

20 A. No, I don't.

21 MR. OKOLI: Again, Counsel, we ask
22 for an unredacted version of this letter.

23 MR. CLOPPER: We may or may not
24 have objections to doing that.

25 Q. Was the addressee of the letter on

1 MITCHELL

2 probation at the time of the termination?

3 A. Based on this letter, yes.

4 Q. Was this person arrested by
5 police, by law enforcement?

6 A. Based on this letter, yes,
7 arrested.

8 Q. And was charged with two counts of
9 aggravated assault?

10 A. That is what it says on this.

11 Q. He was arrested and charged with
12 crimes?

13 A. He was arrested, yes, uh-huh.

14 Q. And it says "charged." Do you see
15 the letter, the second full paragraph,
16 arrested and charged with two counts?

17 A. That is what it says.

18 Q. Do you have any reason to believe
19 that he was not charged?

20 A. That he was not charged? No, I
21 have no reason to believe he was not charged.

22 Q. Okay. May I have that?

23 A. Returning Exhibit 4.

24 (Witness handing.)

25 Q. I am placing before you

1 MITCHELL

2 Plaintiff's Exhibit 5. Do you recognize
3 Plaintiff's Exhibit 5?

4 A. Yes. It is another letter signed
5 by me dated December 22, 2004.

6 Q. Do you know who it was addressed
7 to?

8 A. No, I don't.

9 MR. OKOLI: Again, Counsel, we ask
10 for an unsanitized version of this
11 letter.

12 Q. Based on the letter, it suggests
13 the addressee was hired on a
14 career-conditional appointment in December
15 2003. Is that correct?

16 A. That is what it says, yes.

17 Q. And was on probation?

18 A. Yes.

19 Q. Does this letter suggest that the
20 addressee tried to strangle his wife?

21 A. That's what the letter suggests.

22 Q. And does this suggest that the
23 addressee admitted assaulting the wife by
24 grabbing her by the neck?

25 A. That is what it suggests.

1 MITCHELL

2 Q. Let me place before you
3 Plaintiff's Exhibit 6. Do you recognize
4 Plaintiff's Exhibit 6?

5 A. Yes.

6 Q. Is that another letter of
7 termination?

8 A. It is signed by me dated September
9 20, 2005.

10 Q. And does it show that the
11 addressee was arrested pursuant to a warrant
12 issued by a court in New Jersey?

13 A. Yes, that is what it suggests.

14 Q. And it suggests that the addressee
15 had taken money improperly from someone from
16 undercover, \$2,300. Is that what it suggests,
17 second full paragraph?

18 A. That is what it suggests.

19 Q. And that would suggest criminal
20 behavior; would it not?

21 A. That would suggest criminal
22 behavior.

23 Q. Okay.

24 A. I am returning Plaintiff's Exhibit
25 6.

1 MITCHELL

2 (Witness handing.)

3 Q. Placing before you Exhibit 7,
4 Plaintiff's Exhibit 7, do you recognize what
5 it is?

6 A. It is another letter signed by
7 myself dated March 30, 2005.

8 Q. Was this addressee on probation at
9 the time of this termination?

10 A. Yes.

11 Q. Is there more than one incident or
12 more than two incidents referenced in the
13 letter?

14 A. There are more than two incidents
15 referenced in the letter.

16 Q. Does it indicate --

17 A. Excuse me, I apologize. There are
18 only two incidents listed.

19 Q. Okay.

20 A. The third paragraph relates to the
21 second incident. I apologize. I had to read
22 through it.

23 Q. That is okay. Does it indicate
24 that the addressee had permitted a member of
25 the traveling public to take a look at a

1 MITCHELL

2 customs computer?

3 A. I have to read it. I'm sorry.

4 Q. Okay.

5 (Pause.)

6 A. Actually, no, it doesn't say that
7 this person allowed anyone to read a computer.
8 In fact, by giving me the opportunity to read
9 it, it is all a singular incident. All of
10 this relates to one incident.

11 Q. What do you mean when you said the
12 passenger stated there was no problem with the
13 passport? You attempted to resolve it as the
14 primary officer. What do you mean by that?

15 A. The passenger was a lookout in our
16 automated system. The requirement of the
17 procedure is, if someone is a lookout, they
18 get referred to secondary for resolution of
19 that lookout.

20 In this case, it says that the
21 officer, rather than refer the passenger to
22 secondary, attempted to resolve the lookout as
23 the primary officer as opposed to secondary.

24 Q. Then you admitted the lookout
25 passenger electronically referred her to

1 MITCHELL

2 secondary and made a computer notation that
3 she was in A-2 category and exempt from
4 further action and allowed her to proceed with
5 that photo inspection.

6 What does that mean?

7 A. That means that the officer
8 admitted the passenger, stamped her passport,
9 allowed her entry into the United States.
10 However, electronically in our system,
11 referred her into secondary and then again in
12 their computer system made a notation about
13 the type of Visa and why he let the passenger
14 go.

15 Q. When you say referred her to
16 secondary, would that suggest that there was
17 no reference to secondary?

18 A. No. It was electronic only.

19 Q. Was this supposed to be done
20 physically instead of electronically when you
21 say referred her to secondary?

22 A. Should have been both.

23 Q. Okay. Was this person who came in
24 ever found?

25 A. Not based on this letter. I don't

1 MITCHELL

2 know if they were found later on.

3 Q. As you sit here, you do not know
4 the identity of this person who was let into
5 the country?

6 A. No. Based on this, the only thing
7 I can tell was that they were admitted as a
8 diplomat with an A-2 Visa.

9 Q. And given the circumstances of
10 this passport and admission, we don't know
11 whether this person was, in fact, a diplomat;
12 do we?

13 A. I can't tell that from this
14 letter.

15 Q. And we don't know whether this
16 person is a terrorist?

17 A. I can't tell that from this
18 letter.

19 Q. May I have the document back?

20 A. Returning Exhibit 7.

21 (Witness handing.)

22 Q. Do you know who Camille Polimeni
23 is?

24 A. Yes.

25 Q. Who is Camille Polimeni?

1 MITCHELL

2 A. The area director at JFK Airport.
3 She reports to me.

4 MR. CLOPPER: Can you spell the
5 name for my purposes?

6 THE WITNESS: P-o-l-i-m-e-n-i.

7 MR. CLOPPER: Thank you.

8 Q. Did she report to you in April
9 2005?

10 A. Yes, she did.

11 Q. Could you take a look at Exhibit
12 8?

13 A. Okay.

14 Q. Based on this letter, the
15 addressee had two charges, one of
16 unprofessional behavior and another of misuse
17 of position. Correct?

18 A. Based on this letter, yes.

19 Q. And does it suggest that, when the
20 misuse of position incident occurred, she was
21 off duty? Sorry, the addressee was off duty?

22 A. That's what it says, yes.

23 Q. And it says that you used your
24 position to gain access to secure areas of the
25 JFK Airport?

1 MITCHELL

2 A. It says to a secure area of the
3 JFK Airport.

4 Q. Is a secure area the same thing as
5 a restricted area?

6 A. Those words seem similar to me,
7 yeah.

8 Q. (Continued) "You entered the
9 inspections area of Terminal One wearing a CBP
10 baseball cap and stood near the baggage
11 carousel with your AOA identification card
12 awaiting the arrival of incoming passengers."

13 Have I read that correctly?

14 A. Correct.

15 Q. (Continued) "You did not have
16 authorization to greet incoming passengers in
17 a secure area of Terminal One on that day and
18 there was no other official reason for your
19 presence there."

20 Have I read it correctly so far?

21 A. That is what it says.

22 Q. (Continued) "You were ordered to
23 leave the area and were escorted to the lobby
24 by an on-duty supervisor."

25 Is that correct?

1 MITCHELL

2 A. That is what it says.

3 Q. And the proposed penalty for this
4 person for this incident was two calendar
5 days. Is that correct?

6 A. That is what it says.

7 Q. Do you have any reason to believe
8 that this penalty was not imposed, suspension
9 for two calendar days?

10 A. I don't. Based on this, I cannot
11 tell you that.

12 Q. Okay. Let's go to page 180,
13 second to the last paragraph. It says: "You
14 have the right to be represented by an
15 attorney or other representative of your
16 choice. Any designation of representative
17 should be furnished in writing to Ms. Susan T.
18 Mitchell, director of field operations, New
19 York, One Penn Plaza, 11th floor, New York,
20 New York 10119."

21 Do you see that?

22 A. Yes, I do.

23 Q. Do you recall whether there was
24 anything in writing sent to you on this?

25 A. I have no idea who this is.

1 MITCHELL

2 Q. But would that be the procedure to
3 be followed in this kind of situation for
4 something to be sent to you in writing based
5 on the facts that you see here? Would the
6 procedure be that something be sent to you in
7 writing?

8 A. Yes.

9 MR. CLOPPER: The procedure in
10 this case, in the case that is the
11 subject of this?

12 A. Of this letter?

13 Q. Yes.

14 MR. CLOPPER: Okay.

15 A. Uh-huh, yes.

16 Q. As you sit here today, do you have
17 any reason to believe that the suspension
18 proposed here was not carried out?

19 A. I cannot tell you that from this.

20 Q. May I have that?

21 A. Returning Exhibit 8.

22 (Witness handing.)

23 MR. OKOLI: Again, Counsel, we ask
24 for an unredacted version of Plaintiff's
25 Exhibit 8.

1 MITCHELL

2 MR. CLOPPER: We will consider it.

3 Q. I am placing before you what is
4 marked Plaintiff's Exhibit 9. Do you
5 recognize what it is?

6 A. It is a letter signed by me
7 undated.

8 Q. Is there a reason that you did not
9 date the letter?

10 A. The procedure is that I sign these
11 types of letters and give them to labor and
12 employee relations who dates them and gets
13 them to the employee. I don't do to that.

14 Q. But the signature on the second
15 page is your signature?

16 A. Correct.

17 Q. And there appears a receipt of
18 reprimand dated January 2006 by the
19 recipient?

20 A. That is what it says, yes.

21 Q. It says, in paragraph one, "In
22 order to promote efficiency of the agency, I
23 am issuing you this official letter of
24 reprimand for your unprofessional behavior and
25 misuse of position."

1 MITCHELL

2 Is that correct?

3 A. That is what it says.

4 Q. Now, the third paragraph, the
5 third full paragraph says: "On October 2004
6 while off duty, you used your position to gain
7 access to a secure area of the JFK Airport."

8 Is that correct?

9 A. Correct.

10 Q. (Continued) "You entered the
11 inspections area of Terminal One wearing a CBP
12 baseball cap and stood near the baggage
13 carousel with your AOA identification card
14 awaiting the arrival of incoming passengers."

15 Have I read that so far correctly?

16 A. Correct.

17 Q. The next paragraph says: "In
18 consideration of your offenses," are you
19 talking about the misuse when you say "in
20 consideration"? Are you referring to both the
21 misuse of position and unprofessional behavior
22 that you have referenced earlier?

23 A. That is what it appears.

24 Q. (Continued) "As well as
25 aggravating or mitigating circumstances, I

1 MITCHELL

2 find this official reprimand to be both
3 reasonable conduct and appropriate."

4 Have I read that correctly?

5 A. That is what it says, yes.

6 Q. So as a matter of fact, the
7 addressee was reprimanded? That was the
8 discipline?

9 A. That is what this letter says,
10 yes.

11 Q. No suspension?

12 A. For this letter, right, there's no
13 suspension in this letter. I don't know what
14 was proposed unless it is the exact same case.

15 Q. Yes. If you look at -- let me
16 give you back Plaintiff's Exhibit 8.

17 (Counsel handing.)

18 Q. If you look at the specifications,
19 can you compare the specifications in
20 Plaintiff's Exhibit 8 with the third paragraph
21 of --

22 A. They appear to be the same.

23 Q. Your subordinate had recommended
24 two days suspension; correct?

25 A. In this case, correct.

1 MITCHELL

2 Q. And you decided that what was
3 appropriate was a mail reprimand?

4 A. A letter of reprimand was the
5 final decision in this case.

6 Q. So this person neither lost a day
7 of work nor was he terminated; correct?

8 A. Correct.

9 Q. For two offenses committed: One,
10 accessing a restricted area and then being
11 unprofessional when approached by someone in
12 October? Is that correct?

13 A. That's what it says here.

14 MR. CLOPPER: Do you need to take
15 a break to check that?

16 THE WITNESS: It is okay.

17 Q. Do you know who the addressee of
18 this letter is?

19 A. No, not from this. No, I don't.

20 MR. OKOLI: Again, I will ask for
21 an unredacted or unsanitized copy of this
22 exhibit.

23 MR. CLOPPER: As with the others,
24 we will consider the request.

25 Q. Now, can you explain to me, based

1 MITCHELL

2 on your review of Exhibits 8 and 9, why the
3 appropriate punishment for misuse of position
4 by the individual referenced in Exhibits 8 and
5 9 is reprimand and the appropriate punishment
6 for the plaintiff for the misuse of position
7 was termination?

8 A. In looking at this file, I cannot
9 tell you because it is not a complete file.
10 So I don't have any of the full procedures and
11 any of the due process that was given to this
12 non-probationary employee in this case.

13 So I have to have the complete
14 case file in front of me to consider what was
15 different other than the probationary status
16 and he was not in uniform. Those are the
17 differences that jump up, but I would need the
18 full file to be able to articulate it any
19 further.

20 Q. When you say he was not in
21 uniform, he was off duty. Correct?

22 A. Based on this letter, yes.

23 Q. And he wore a baseball cap with a
24 CBP insignia on it?

25 A. Correct.

1 MITCHELL

2 Q. And he knew he was not supposed to
3 be there and he went there anyway to the
4 secure area?

5 A. That is what it says here.

6 Q. Okay. And, in fact, in the case
7 of the individual, he was ordered to leave the
8 area and was, in fact, escorted out of the
9 area. Correct?

10 A. That is what it says here.

11 Q. Ms. Akinyemi was not ordered to
12 leave the area neither was she escorted out of
13 the area; correct?

14 A. I don't know that she was,
15 correct.

16 Q. May I have those exhibits back?

17 A. Returning Exhibits 8 and 9.

18 (Witness handing.)

19 Q. Do you know who John Mirandona is?

20 A. He is the assistant area director
21 for passenger operations at JFK Airport.

22 Q. And did he report to you in
23 January 2005?

24 A. He reports to Camille Polimeni who
25 reports to me, so I am his second-line

1 MITCHELL

2 supervisor.

3 MR. CLOPPER: Just spell the name.

4 THE WITNESS: M-i-r-a-n-d-o-n-a.

5 Q. I am placing before you what is
6 marked as Plaintiff's Exhibit 10. Do you know
7 who the recipient of that letter is?

8 A. No, I can't tell from this.

9 Q. Does the letter suggest that the
10 assistant area director was proposing to
11 suspend the recipient from duty and pay for 14
12 days?

13 A. That's what it says here. The
14 supervisory officer for 14 days, correct.

15 Q. The charge was use of position or
16 authority for other than official purposes?

17 A. That is what it says there.

18 Q. The specifications that -- let me
19 read out the specifications and correct me if
20 I am wrong:

21 "On September 2005 at
22 approximately 8:45 a.m., you were observed in
23 uniform at the American Airlines terminal at
24 JFK Airport escorting a male passenger through
25 Transportation Security Administration (TSA)

1 MITCHELL

2 screening to the gate area."

3 Have I read that correctly so far?

4 A. Yes.

5 Q. (Continued) "You were not
6 scheduled to work on this day and you had no
7 official reason to enter the secure gate area
8 or to escort this male passenger through the
9 TSA screening process."

10 Have I read that correctly so far?

11 A. Correct.

12 Q. (Continued) "Subsequently, you
13 submitted a memorandum dated October 2005
14 addressing these allegations in which you
15 affirmed that on September 2005, you
16 accompanied your husband to the American
17 Airlines terminal where he was scheduled to
18 depart on a flight to Barbados."

19 Have I read it correctly so far?

20 A. Correct.

21 Q. (Continued) "You stated that you
22 thought you were scheduled to work the
23 10:00-18:00 shift at Terminal One but learned
24 when you arrived at the airport that you were
25 not scheduled to work until the next day. You

1 MITCHELL

2 stated that you wore a blue windbreaker and
3 that no CBP emblem was visible but that your
4 airport operations area (AOA) card was visible
5 at all times."

6 Have I read that correctly so far?

7 A. Correct.

8 Q. (Continued) "You stated that your
9 husband and his bags went through the security
10 scanner and that TSA took three cans of spray
11 starch from your husband, which you picked up
12 on the way out of the secure area."

13 Is that correct so far?

14 A. That is what it says, uh-huh.

15 Q. (Continued) "You stated that you
16 did not request special treatment and that no
17 special treatment was accorded to your
18 husband."

19 Is it fair to say that, based on
20 this letter, there was no recommendation for
21 this person to be terminated?

22 A. The proposal is for a 14-day
23 suspension.

24 Q. Not termination?

25 A. Correct.

1 MITCHELL

2 Q. Okay. Now, if I may ask again,
3 can you perhaps distinguish the case of the
4 person in Exhibit 10 and that of the
5 plaintiff?

6 A. I was not involved in this case.
7 From the look of it being that the proposal
8 was from the assistant area director, the
9 deciding official would have been the area
10 director. So I have no direct knowledge of
11 this case as it is read here.

12 Q. But given now that you know about
13 this from what you read and based on what you
14 know about the plaintiff, can you tell me what
15 distinguishes this case from the plaintiff's
16 case?

17 A. I would say from reading this
18 letter, a supervisory officer is not a
19 probationary employee and has been a long-time
20 employee.

21 Q. So the only difference is that
22 this person was not on probation. That is, to
23 your mind, that is the only thing that
24 distinguishes both?

25 A. I don't know.

1 MITCHELL

2 MR. CLOPPER: That is
3 mischaracterizing the witness' testimony.

4 Q. Is there anything other than the
5 fact that the addressee of Exhibit 10 was not
6 on probation at the time of the offense,
7 anything else that distinguishes this
8 situation from the plaintiff's situation to
9 your mind?

10 A. I would have to see the entire
11 case file.

12 Q. Without --

13 A. I think it is unfair for me to
14 make an assumption about this letter versus
15 your client.

16 Q. Without the entire case file, you
17 cannot say that. Correct?

18 A. Correct.

19 MR. OKOLI: Counsel, we will be
20 asking for -- in fact, I will be asking
21 for this letter, the unredacted portions,
22 and every document that backs up each and
23 every one of these incidents.

24 MR. CLOPPER: We will consider the
25 written request.

1 MITCHELL

2 MR. OKOLI: Yes.

3 Q. As you sit here today --

4 A. I am returning Exhibit 10.

5 (Witness handing.)

6 Q. As you sit here today, are you
7 aware or have you ever heard that customs
8 employees were profiling Nigerian passengers
9 at the airports whether or not it is true?

10 Have you ever heard that whether
11 it is true or something that is not true?
12 Have you ever heard about that suggestion,
13 complaint, or allegation that customs officers
14 were targeting Nigerian passengers for
15 profiling?

16 MR. CLOPPER: By any person at any
17 time?

18 MR. OKOLI: Yes.

19 Q. At the airports since you became
20 director of fields operations?

21 A. Since 2002 and I must ask you
22 which word you actually want to use because
23 you used two different words?

24 Q. Let me --

25 A. One time, you said "profiling" and

1 MITCHELL

2 another time you said "targeting."

3 Q. Sorry, let me rephrase it. Since
4 you became the director of field operations,
5 have you heard any allegations, whether it is
6 true or false, that customs officers were
7 profiling Nigerian airline passengers?

8 A. Since 2002, I have not heard
9 anyone make a claim of profiling Nigerian
10 passengers by Customs.

11 Q. When did you first become a
12 director of field operations?

13 A. In July 2002.

14 Q. Since 2002, have you ever heard of
15 any allegation that customs officers were
16 targeting Nigerian passengers?

17 A. Since 2002, I have not heard
18 anyone claiming Nigerian passengers have been
19 targeted. I have not heard that personally.

20 MR. CLOPPER: I will object. If
21 you could, clarify whether you are
22 talking about passengers on Nigerian
23 planes bound to and from Nigeria or
24 Nigerian citizens or nationals?

25 MR. OKOLI: Passengers. I said

1 MITCHELL

2 passengers, Nigerian passengers.

3 A. I stand by my statement. I have
4 not heard anyone claiming the targeting of
5 Nigerian passengers since 2002.

6 Q. Had you ever heard that prior to
7 2002?

8 A. Yes.

9 Q. Where did you hear it from?

10 A. There have been many claims of
11 profiling by many nationalities and Nigerians
12 did claim that there were claims of profiling
13 by the U.S. Customs Service of Nigerian
14 passengers.

15 Q. From what you recall, who claimed
16 that Nigerian passengers were being profiled?

17 A. The press usually.

18 Q. I'm sorry?

19 A. The press.

20 Q. So it was in the press that you
21 heard it or you saw it?

22 A. Uh-huh, yes.

23 Q. Are you aware whether or not it's
24 factually correct, since 2002, of a perception
25 that Nigerians were being profiled, Nigerian

1 MITCHELL

2 passengers were being profiled?

3 MR. CLOPPER: Again, I object.

4 Maybe this is my misunderstanding, but I
5 don't know if we are talking about people
6 who are on Nigerian planes who may be
7 from anyplace in the world or who are
8 ethnically Nigerians?

9 MR. OKOLI: We are talking of
10 people who are either ethnically Nigerian
11 on other planes or people going or coming
12 from Nigeria who are dark-skinned. That
13 is what we are talking about.

14 I am not talking about a Nigerian
15 American diplomat living in or traveling
16 to Nigeria, a white American diplomat or
17 a worker of IBM. That is not what I am
18 talking about or oil workers. I am
19 talking of a dark-skinned negroid.

20 A. We have many complaints from many
21 passengers from many flights that are claiming
22 that they are being profiled.

23 Q. Sorry, but I'm not asking you
24 about complaints of other people. My question
25 is very, very clear. It is yes or no. I am

1 MITCHELL

2 not interested in profiling of Polish people,
3 Bulgarians. All that I am interested in is
4 Nigerian passengers. If it is not for
5 Nigerian passengers, I will be glad to take
6 the answer no.

7 MR. CLOPPER: Repeat the
8 question.

9 MR. OKOLI: My question does not
10 relate to anyone else. It is about
11 Nigerians, so I will ask you to instruct
12 your client to be responsive to that. If
13 she doesn't know, she doesn't know.

14 Q. Are you aware of any perception
15 that ethnic Nigerians or Nigerian passengers,
16 whether traveling out of the United States or
17 coming into the United States, are being
18 profiled or targeted for different treatment
19 by CBP or U.S. Customs?

20 MR. CLOPPER: Objection. At this
21 time?

22 MR. OKOLI: Has she ever?

23 MR. CLOPPER: Ever?

24 MR. OKOLI: Yes, of that
25 perception I am talking about.

1 MITCHELL

2 A. I don't know what people's
3 perceptions are.

4 Q. Okay. Did you ever hear any
5 rumors, not in the press, from the workplace?

6 A. So now is your question employees?

7 Q. Employees.

8 A. I have never heard employees say
9 that we are profiling Nigerians or passengers
10 on Nigerian planes.

11 Q. Now, I will ask a slightly
12 different question. Since Ms. Akinyemi's
13 case, have you learned, maybe third-hand or
14 fourth-hand, learned that a customs employee
15 thought that Nigerian passengers were being
16 profiled?

17 A. I have never learned that a
18 customs employee thought that Nigerian
19 passengers were being profiled.

20 Q. Okay. If they were being
21 profiled, would you see anything wrong with
22 that?

23 A. We don't profile passengers at
24 all.

25 Q. I am just asking. If they were,

1 MITCHELL

2 would you find anything wrong with that?

3 A. Yes. I don't believe profiling is
4 an effective law enforcement tool.

5 Q. As the director of field
6 operations, are you aware of any policies in
7 place regarding drug trafficking that are
8 applied differently to Nigerians than they are
9 applied to others?

10 A. I don't know of any policy that
11 applies to one nationality versus another.

12 Q. So as you sit here today, you do
13 not know whether Nigerians have ever been
14 profiled by customs officers within your area
15 of command based on the perception of
16 trafficking and drugs?

17 A. I don't know of any of my
18 employees that ever profiled anyone. I do
19 believe that flights from Nigeria have been
20 targeted, but it is the country as opposed to
21 the people.

22 Q. What is the distinction between
23 the country and the people?

24 A. We have a variety of countries of
25 interest, whether for terrorism or for

1 MITCHELL

2 narcotics. Anyone coming from that country
3 could be questioned for those reasons, not
4 necessarily the people, the nationality.

5 It is the country where the flight
6 is coming from, where the passenger is coming
7 from, not where the passenger was born, that
8 is of interest for a law enforcement
9 perspective.

10 Q. When you say "the country where
11 the flight is coming from," as a matter of
12 common sense, would you expect more people on
13 that flight be citizens of that country than
14 non-citizens?

15 A. That would be the norm.

16 Q. So if you were targeting a flight
17 coming from Nigeria, you would expect the
18 majority of the people flying on that plane to
19 be Nigerian citizens?

20 A. Correct, but they may not be the
21 ones of interest to us. In fact, it may be
22 the non-Nigerians that is of more interest to
23 us from a law enforcement perspective.

24 Q. Do you have any documentation of
25 the people that you have interdicted or

1 MITCHELL

2 challenged as persons of interest coming on
3 flights from Nigeria? Do you have any such
4 documents?

5 A. Every passenger coming through has
6 to go through a clearance process, so I could
7 tell you every passenger has been talked to
8 and has been examined for CBP.

9 Q. That is not my question. When you
10 talk about targeting, what does targeting mean
11 to you? Explain that to us when you say
12 certain countries, flights from certain
13 countries are targeted. Explain that to us.
14 What does that mean?

15 A. Certain countries might be --
16 depending on the particular area of interest,
17 certain flights coming from certain countries
18 might have more interest and so I would expect
19 that resources would be more dedicated to
20 looking and determining the threat of those
21 individual passengers in that flight.

22 Q. When you say certain flights
23 coming from certain countries have more
24 interest, what is that in plain speak?

25 A. It could be for terrorism. We

1 MITCHELL
2 have a variety of flights that are of interest
3 for that. For narcotics, we have flights of
4 interest. For agriculture, we have flights of
5 interest for those various items.

6 Q. Could you name the flights of
7 interest in relation to narcotics that you are
8 aware of since you became director of field
9 operations?

10 MR. CLOPPER: Objection. I think
11 we need to take a break. I need to --

12 MR. OKOLI: Not while a question
13 is pending on the record and the fact
14 that counsel is asking for a break --

15 MR. CLOPPER: Sure. I am
16 concerned about a privilege issue here.
17 Do you think you can answer that
18 question without violating a privilege,
19 including law enforcement privilege?

20 THE WITNESS: That is law
21 enforcement sensitive information.

22 MR. CLOPPER: I am with National
23 Security. I am instructing my client not
24 to answer.

25 Q. But you do admit that there are

1 MITCHELL

2 flights coming from certain countries that
3 Customs targets?

4 A. Correct, we do have targets.

5 Q. Okay. And some of the targets are
6 based on the perception that those flights are
7 likely to have drug traffickers?

8 A. I would not use the word
9 "perception."

10 Q. In terms of drugs, what would
11 cause you to have specific interest in flights
12 coming from a certain country, whatever that
13 country is?

14 A. It could be the region of the
15 world that it is. It could be specific
16 information. It could be general information
17 in the intelligence community. It could be
18 past history of successful interdiction.
19 There's a variety of reasons that together
20 could form the basis for a risk assessment.

21 Q. So if a customs officer were to
22 say that they targeted Nigerians because of
23 their possible drug involvement, that would be
24 incorrect?

25 A. I would think that it would be

1 MITCHELL

2 incorrect to target Nigerians.

3 Q. No, no, no. I am --

4 A. That is the question you asked
5 though.

6 Q. No. My question is -- let me
7 rephrase my question. My question is, if a
8 customs officer were to testify that they, at
9 their location at the airport, targeted
10 Nigerian passengers, you would say that that
11 customs officer's testimony is incorrect?

12 A. In the context that you just said,
13 yes, I would say that is incorrect.

14 Q. But you do not work at the
15 airport; do you?

16 A. Not anymore. That is within my
17 area of responsibility, but I am not assigned
18 at the airport.

19 Q. So even as the director of field
20 operations, if a customs officer who actually
21 works at the airport were to say that they
22 targeted Nigerians, Nigerian passengers, you
23 would dispute that?

24 A. I would think that that was not a
25 good law enforcement tool, and I don't think

1 MITCHELL

2 that that's appropriate.

3 Q. Well, it is not whether it is
4 appropriate but whether you are going to say
5 that that officer is not telling the truth?

6 A. I don't know what's making him say
7 that, so it is hard for me to assess the
8 truthfulness of his statement.

9 Q. In other words, you are not in a
10 position to say one way or the other what is
11 actually going on at the airports except what
12 somebody reports to you. Correct?

13 A. That's correct.

14 MR. OKOLI: All right. That would
15 be it.

16 MR. CLOPPER: Great. Let us take
17 a five-minute break. I may have
18 follow-up questions and it would be just
19 a couple, if any.

20 MR. OKOLI: Okay.

21 (Whereupon, a short recess was
22 taken.)

23 MR. CLOPPER: I will ask two
24 questions.

25 MR. OKOLI: Sure.

1 MITCHELL

2 EXAMINATION BY

3 MR. CLOPPER:

4 Q. Ms. Mitchell, my name is John
5 Clopper and I represent the defendants in this
6 case. I am going to be asking you a couple of
7 questions.

8 Earlier in the deposition, you
9 were questioned by Mr. Okoli about the
10 investigation and/or discipline of Sharmila
11 Haq Zaman.

12 At the time you became aware of
13 the allegations against Ms. Zaman, was
14 Ms. Zaman a probationary or permanent
15 employee?

16 A. She was a permanent employee by
17 that time.

18 Q. Earlier in the deposition,
19 Mr. Okoli asked you a few questions about
20 Ms. Zaman and I don't want to misquote you but
21 part of the procedure in that situation called
22 for the possibility of an oral reply.

23 Did the procedure that applied in
24 that case differ as a result of Ms. Zaman's
25 status as a permanent employee at that time?

1 MITCHELL

2 A. Permanent employees do have a
3 different distinct process in the discipline
4 or adverse action.

5 MR. CLOPPER: Thank you. I don't
6 have any further questions.

7 MR. OKOLI: Okay.

8 CONTINUED EXAMINATION BY

9 MR. OKOLI:

10 Q. Please listen carefully to my
11 question. I don't want to know what you
12 discussed with counsel, but my question is
13 this: During the break, did you have any
14 conversation -- it is a yes or no answer that
15 I am looking for. Did you have any
16 conversation with counsel regarding how you
17 were going to respond to the questions that
18 were just put to you?

19 A. Absolutely not.

20 MR. OKOLI: Thank you.

21 MR. CLOPPER: During the break,
22 Ms. Mitchell and I discussed certain
23 subject areas. I did not and she did
24 not -- we discussed the subject areas.
25 We did not -- I wasn't quite sure what

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2

your question was.

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4

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Just to clarify, I did not direct
my client to answer the questions in a
specific way.

6

7

8

MR. OKOLI: I don't think there's
anything to say. He is just making a
statement on the record.

9

10

11

12

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17


SUSAN MITCHELL

18

Subscribed and sworn to before me

19

this 11th day of November 2007.

20

21


NOTARY PUBLIC

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Mary McGarvey-DePuy
Notary Public, State of New York
No. 02MC6040900
Qualified in Queens County
Commission Expires 5/1/10

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E X H I B I T S

PLAINTIFF'S EXHIBITS:

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